



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Adak Communication Systems, Inc.
File: B-226952
Date: June 1, 1987

DIGEST

1. Protester was not prejudiced by contracting agency's failure to conduct oral discussions with it because agency representative visited all offerors' facilities, including the protester's; evaluated all as essentially equal; and no offeror was permitted to amend its proposal.
2. Requirement in solicitation for radio maintenance services that the contractor ensure its technicians be factory certified by the manufacturer is a performance requirement and does not require the certificates as a precondition for award. Offeror's ability to comply with the requirement involves a matter of the offeror's general responsibility, not a definitive responsibility criterion.

DECISION

Adak Communication Systems, Inc. protests the Air Force's failure to conduct discussions with it and the subsequent award of a contract to Frontier Radio, Inc. under request for proposals (RFP) No. F26600-87-R-0023. The RFP was issued by Nellis Air Force Base, Nevada, for a fixed-price requirements type contract for the maintenance of land mobile radios.

We deny the protest.

The RFP's section concerning proposal evaluation stated that agency personnel would conduct a "survey . . . shortly after bid opening" to determine the offeror's ability to perform. The RFP further indicated that the survey would encompass six listed factors including start-up and phase-in, key personnel, labor force, project manager, organization and manning charts. Award was to be based 60 percent on technical factors and 40 percent on price. After initial

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proposals were received, agency personnel visited the three acceptable offeror's local facilities including Adak's for the purpose of conducting the "surveys." Agency personnel met with representatives of each offeror except Adak, who did not have a representative present. After conducting the surveys and evaluating the proposals, the agency determined that all three firms were acceptable and equal technically. Thus, the agency decided to award a contract to Frontier Radio which submitted the lowest priced proposal without requesting best and final offers.

Adak contends that the agency improperly conducted oral discussions with the other offerors during their surveys but not with Adak, and thus denied the protester an opportunity to revise its proposal, Adak also argues that Frontier Radio lacks the required certification of its technicians from Motorola, one of the manufacturers of the radios to be maintained.

The Air Force argues that the visits to the offerors' facilities did not constitute discussions because the visits merely confirmed the offerors' capability to perform and the firms were not permitted to modify their proposals. In the agency's view, the visits were analogous to preaward surveys concerning the offerors' responsibility. The Air Force argues that even if the visits are characterized as discussions, they were immaterial since no offeror was permitted to change its proposal.

We have defined discussions as communications between an agency and an offeror involving information essential for determining the acceptability of a proposal. Uniserv Inc. et al., B-218196 et al., June 19, 1985, 85-1 CPD ¶ 699. When an agency conducts discussions with one offeror, it generally must conduct discussions with all offerors in the competitive range and afford them an opportunity to revise their proposals. Menasco, Inc., B-223970, Dec. 22, 1986, 86-2 CPD ¶ 696.

Here, during the visits agency personnel viewed all three offeror's facilities and in those two instances where company representatives were available, asked them questions concerning the firms' parts inventory, equipment and library. This information appears to have been used during the scoring and evaluation of the proposals. It, thus, appears that at least in the technical sense the visits and conversations with the firms other than Adak constituted discussions. See Group Hospital Service, Inc. (Blue Cross of Texas), 58 Gen. 263, 274 (1979), 79-1 CPD ¶ 245. In any event, agency personnel did visit Adak's facility at Nellis Air Force Base and, while they did not communicate with

an Adak representative, the agency concluded that Adak's facilities were acceptable and rated its proposal as technically equal to the others. Adak does not argue that its proposal would have been more highly rated if oral discussions were conducted with it nor does it even contend that it would have either lowered its price or changed its technical proposal if given the opportunity to do so. While we do think that the extent of discussions should be determined by the agency's reasoned judgment, Chemonics International, B-222793, Aug. 6, 1986, 86-2 CPD ¶ 161, not by whether an offeror's representative happens to be available, since no offeror was permitted to alter its proposal and Adak was determined to be technically equal to the others, we cannot conclude that the protester was prejudiced by the agency's failure to hold oral discussions with it.

Further, the protester argues that Frontier Radio lacked the certification required by RFP section C.5.8.3, which states that the contractor must "ensure that technicians who inspect or repair these assets are 'Factory Certified' as required by the manufacturer." While the provision cited by the protester constitutes a contractor performance requirement rather than a precondition for award, Hettich GmbH and Co. KG, B-224267, Oct. 24, 1986, 86-2 CPD ¶ 457, the RFP did require that offerors submit resumes with their proposals for technicians or engineers which include factory mutual certification for certified intrinsically safe radios and manufacturer certification for Data Encryption Standard radios.

Frontier Radio did submit certificates issued by the Mobile Radio Department, General Electric Company, a manufacturer of some of the radios. Further, Frontier Radio agreed in its proposal to ensure that its technicians met the performance requirements regarding certification. The agency therefore had a reasonable basis to evaluate Frontier Radio as being technically acceptable and eligible for award. Whether in fact Frontier Radio will be able to obtain certification from all the manufacturers, including Motorola, of the radios to be maintained concerns Frontier Radio's general responsibility, the agency's affirmative determination of which we will not review absent a showing

of fraud or bad faith by the agency in making the determination. Hettich GmbH and Co. KG, B-224267, supra. No such showing has been made here.

The protest is denied.

for *Seymour E. Fox*
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General Counsel